

Volume 3. Air Operator Technical Administration

CHAPTER 1. OPERATIONS SPECIFICATIONS

SECTION 7. AMENDMENT, SURRENDER, AND SUSPENSION OF OPSPECS

261. APPLICABILITY. Title 14 of the Code of Federal Regulations (14 CFR) part 119, § 119.51, specifies that Operations Specifications (OpSpecs) can be amended as a result of a certificate holder or operator's request or because the Federal Aviation Administration (FAA) determines that safety in air transportation or air commerce (in the case of a commercial operator) is affected and the change is in the public interest. In addition, a certificate holder or operator's OpSpecs may be amended by the FAA due to a change in the certificate holder or operator's operating environment. This section contains direction and guidance to be used by principal inspectors for the amendment, surrender, and suspension of OpSpecs for 14 CFR parts 121, 125, and 135 certificate holders (see volume 2, chapter 4 of this handbook for information on the processing of 14 CFR part 129 foreign air carrier OpSpecs).

263. AMENDMENT PROCESS USING AUTOMATED OPERATIONS SAFETY SYSTEM (OPSS). Regardless of who initiates the amendment of a certificate holder or operator's OpSpecs, the automation process involves the same basic procedures. The amendment of the OpSpecs may involve the principal inspector doing any of the following: entering new data for the OpSpecs amendment, changing the OpSpec A004 checklist, or changing only an OpSpec paragraph. Principal inspectors should use the procedures outlined in the current OPSS User's Manual.

265. AMENDMENTS OF OPSPECS. When amending OpSpecs, the principal inspectors should take into account the extent and complexity of the amendment. If the amendment is uncomplicated and involves only one or two paragraphs, then it may be practical to print only the affected paragraphs. If the amendment is extensive, such as when a certificate holder or operator upgrades from part 135 operations to part 121 operations, then the principal inspectors must generate a complete set of OpSpecs in the part 121 database. The principal inspectors should review the draft set of OpSpecs with the certificate holder or operator and, if necessary, make any corrections and resolve any conflicts. After the final corrections are made, the principal inspectors should print and issue two sets of the amended OpSpecs to the applicant; one set for the applicant's review and files, and one set for receipt and return. An amendment may be initiated either at the certificate holder or operator's request or by FAA initiation. The procedures for these two methods of initiating an amendment are as follows:

A. Amendment of OpSpecs at Operator's Request. An operator may, in accordance with part 119, § 119.51, initiate an application to amend its OpSpecs by submitting a letter or electronic proposal within the OPSS to the appropriate FAA office. The certificate holder or operator's request should include: a formal request for the desired changes, an explanation of the reasons for those changes, and any supporting information. In accordance with § 119.51, the certificate holder or operator must file the application for amendment at least 15 days before the proposed effective date of the amendment.

(1) *Incomplete Application.* If the application is incomplete, FAA should inform the applicant that the application is not acceptable in its present form but will be considered upon the receipt of additional, specified supporting documents and/or information.

(2) *Unacceptable Application.* FAA may determine that the application is not acceptable because: the certificate holder or operator's request does not provide for an adequate level of safety in air transportation or air commerce; it would not be in the best interest of the public; or it is in conflict with FAA policy or 14 CFR. In such a case, the applicant should be informed, in writing, that the application is unacceptable and include a statement explaining why it is not acceptable. The certificate holder or operator will have certain rights of appeal which are discussed in paragraph 269 in this section.

B. FAA-Initiated Amendment of OpSpecs. If FAA determines that an amendment to the certificate holder or operator's OpSpecs is justified, FAA should amend the OpSpecs in accordance with the procedures discussed in volume 3, chapter 1, section 2. In the case of a change in a certificate holder or operator's operating environment or when the FAA has specific safety concerns, the following procedures apply:

(1) *Change in the Certificate Holder or Operator's Operating Environment.* In some cases, FAA may decide to amend a certificate holder or operator's OpSpecs due to a change in the operator's operational environment. For example, FAA may create a new OpSpec paragraph to ensure uniform compliance with a certain aspect of 14 CFR. In such cases, the principal operations inspector (POI) may initiate and amend an operator's OpSpecs due to the change, without the operator having to apply for the change. Once the operator has demonstrated compliance with all appropriate parts of 14 CFR and operational and airworthiness

requirements, the OpSpecs may be issued in accordance with the procedures discussed in volume 3, chapter 1, section 2.

(2) *Safety Concerns.* Section 119.51 provides the authority for FAA to unilaterally amend a certificate holder or operator's OpSpecs when FAA has determined that safety in air transportation and the public interest necessitates such an amendment. When amending a certificate holder or operator's OpSpecs under these regulations, the FAA is required to notify the certificate holder or operator in writing and then allow a minimum of 7 days for comments regarding the proposal. The 7-day period provides the certificate holder or operator with an opportunity to submit written information, views, and arguments on the proposal. After reviewing the comments, FAA either rescinds or adopts the amendment. If FAA decides to amend the OpSpecs, the final amended OpSpecs should have an effective date of not less than 30 days after receipt by the operator. The operator has certain appeal rights which are discussed in paragraph 269. Examples of the types of FAA-initiated amendments due to safety concerns are as follows:

(a) FAA will propose to amend a certificate holder or operator's OpSpecs when it is determined that the certificate holder or operator's operating environment or its operational capability is no longer consistent with the operating authorizations, conditions, and limitations contained in its OpSpecs. Examples of such cases are when the certificate holder or operator:

- Terminates operations with a specific make/model/series of aircraft that is authorized in its OpSpecs
- Has a series of accidents or incidents involving a particular type of operation (such as low visibility takeoffs and/or landings at a time when the OpSpecs authorize lower than standard weather minimums)
- Terminates a particular type or kind of operation or area of operation (such as when the operator no longer conducts flag or minimum navigation performance specifications (MNPS) operations)

(b) FAA also amends a certificate holder or operator's OpSpecs when the standard automated OpSpecs have been revised on a national basis and Washington Headquarters has requested that the principal inspectors amend all of their operator's OpSpecs. In this case, the OpSpecs should be amended in accordance with guidelines and procedures that have been established by Washington Headquarters.

267. EMERGENCY AMENDMENT OF OPSPECS.

Section 119.51 provides that FAA may amend a certificate holder or operator's OpSpecs without a stay and also that the amendment will become effective immediately upon receipt by the operator. This case applies only when an emergency exists which requires immediate action with respect to safety in air transportation and when the other procedures to amend OpSpecs found in § 119.51 are impractical or contrary to the public interest. One example of when an emergency amendment to a certificate holder or operator's OpSpecs would be justified would be when the certificate holder or operator is knowingly operating a make/model/series of aircraft that is authorized in OpSpec paragraph A003 of its OpSpecs, but is doing so either with unqualified crewmembers or with the aircraft not in an airworthy condition (OpSpec D085). Another example would be when the operator is continuing to operate flights into an airport or area that has been shown to be unsafe due to inadequate or unavailable facilities either because of a natural disaster or civil strife.

A. Contents of Emergency Order. In accordance with § 119.51(e), if an emergency amendment is made to a certificate holder or operator's OpSpecs, the amendment must contain the finding of the emergency action and the reasons for the action. The emergency order must also contain a statement that, within 30 days, the Regional Flight Standards Division (RFSO) manager will consider any facts presented by the operator which show that the emergency order is unwarranted or that the deficiencies in question have been corrected.

B. Further Guidance. An emergency amendment to a certificate holder or operator's OpSpecs does not constitute a certificate action within the meaning of Title 49 of the United States Code (U.S.C.) § 44709 (formerly § 609 of the Federal Aviation Act (FA Act)) but is a certificate action within the meaning of 49 U.S.C. § 46105 (formerly § 1005 of the FA Act) and 14 CFR part 13, § 13.20. An emergency amendment to a certificate holder or operator's OpSpecs requires close coordination with the POI, the RFSO, and the office of Regional Counsel. A limited amount of guidance concerning such orders is contained in FAA Order 2150.3A, Compliance and Enforcement Program.

269. CERTIFICATE HOLDER OR OPERATOR APPEAL RIGHTS.

In all situations involving OpSpec amendments or FAA-initiated, non-emergency amendments, a certificate holder or operator has certain appeal rights. These appeal rights are provided in § 119.51, and are exercised according to the way in which the amendment was initiated, as follows:

A. Operator-Requested Amendments. If FAA has determined that a certificate holder or operator's request for an amendment to its OpSpecs is unacceptable, the operator may, within 30 days after receipt of the Certificate Holding District Office's (CHDO) notice of disapproval, petition the

Director of Flight Standards Service (AFS-1) to reconsider the CHDO's refusal to amend the OpSpecs (see paragraph 265A). During the course of the reconsideration time period, no amendments to the OpSpec paragraph(s) will be made. A petition made by a certificate holder or operator more than 30 days after receiving the notice of disapproval will not be considered by FAA. If AFS-1 determines that an amendment to a certificate holder or operator's OpSpecs is justified, the appropriate RFSD office will be notified and instructed to amend the OpSpecs either as requested by the certificate holder or operator or as amended by FAA. If AFS-1 determines, after considering the certificate holder or operator's petition, that an amendment is not appropriate, the operator and the RFSD will be notified accordingly. In the case of disapproval, 14 CFR does not provide any additional appeal rights for the operator.

B. FAA-Initiated Amendments. When FAA determines that an amendment to a certificate holder or operator's OpSpecs is necessary (see paragraph 265B), a notice of the proposed amendment must be provided, in writing, to the operator. The notice provides for not less than a 7-day period within which the operator may submit to the CHDO any written data, views, and arguments concerning the proposed amendment. If, after considering any objections the operator may have, the CHDO determines that the proposed amendment should be made, the CHDO will notify the operator, and send the amended OpSpec. The OpSpec will have an effective date of not less than 30 days after the date that the certificate holder or operator received the notice. The operator may, within the 30-day period, appeal the proposed amendment to AFS-1. If the operator elects to petition AFS-1 for reconsideration of the proposed amendment, the effective date of the amendment is stayed until a decision has been made by AFS-1 as to the final disposition of the proposed amendment. If AFS-1 determines that the proposed amendment to the certificate holder or operator's OpSpecs is justified, the appropriate RFSD office will be notified to amend the OpSpecs. If AFS-1 determines, after considering the operator's petition, that the proposed amendment is not appropriate, the operator and the RFSD will be notified that there will be no amendment.

NOTE: If AFS-1 denies the appeal, 14 CFR does not provide any additional appeal rights for the operator.

C. Emergency Amendments. As stated in paragraph 267, an emergency order amending a certificate holder or operator's OpSpecs must contain a statement that the operator has 30 days to reply in writing to the order or to request a hearing in accordance with Subpart D of part 13. The emergency amendment to the OpSpecs remains effective until the matter is finally adjudicated.

271. SURRENDERING OF OPSPECS. Upon a change in its operating environment, a certificate holder or operator should exchange the appropriate paragraphs of its OpSpecs

for the amended paragraphs that reflect the new operating environment. The principal inspectors are responsible for updating the OPSS of the certificate holder or operator's certificate status and date of a change in the operating environment, as applicable.

A. Criteria. The criteria to hold a particular OpSpec authorization is no less than that necessary for its original issuance. For example, if a certificate holder or operator was issued an authorization to conduct operations in MNPS airspace, but no longer has aircraft equipped to conduct that kind of operation, the certificate holder or operator must surrender the MNPS authorization.

(1) If a certificate holder or operator ceases all operations and is no longer equipped, or able to conduct any kind of operation, the CHDO shall request that the certificate holder or operator voluntarily surrender all of the OpSpecs. Depending upon the circumstances, the CHDO may also request that the certificate holder or operator voluntarily surrender the certificate (see volume 2, chapter 3, section 4 for information on the surrender of certificates).

(2) Seasonal operators who are equipped to resume operations are not required to surrender OpSpecs during the inactive season.

B. Refusal to Surrender. If an operator does not meet the requirement to hold an OpSpec paragraph, but refuses to surrender the paragraph, the POI shall amend the OpSpec as discussed in paragraph 269 of this section. If safety is affected in air commerce, then an emergency amendment is appropriate.

C. Voluntary Surrender. If a certificate holder or operator voluntarily surrenders a part of its OpSpecs, an amended OpSpec must be issued to reflect the certificate holder or operator's new operating environment. If an operator surrenders all of its OpSpecs, the OpSpecs shall be archived in OPSS as described in the OPSS User's Guide.

273. SUSPENSION OF OPSPECS. The suspension of a certificate holder or operator's OpSpecs generally occurs after legal enforcement action. FAA Order 2150.3, Compliance and Enforcement Program, contains the information, policies, guidelines, and procedures to be followed by principal inspectors when taking legal enforcement action against a certificate holder or operator and when taking actions that would result in the suspension of the certificate holder or operator's OpSpecs. The principal inspectors are responsible for updating the OPSS of the certificate holder or operator's certificate status and date of a change in the operating environment, as applicable.

274. - 280. RESERVED.

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